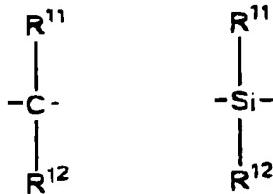


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radical, and m plus n are zero or 1.

3. A compound [as claimed in claim 1, wherein the compound of the formula I is]

selected from the group consisting of $[\text{Me}_2\text{Si}(2,4\text{-dimethyl-1-indenyl})_2\text{ZrCl}_2$, $\text{Me}_2\text{Si}(2\text{-methyl-4-isopropyl-1-indenyl})_2\text{ZrCl}_2$, $\text{Me}_2\text{Si}(2\text{-ethyl-4,methyl-1-indenyl})_2\text{ZrCl}_2$, $\text{Ph}(\text{Me})\text{Si}(2\text{-methyl-4-isopropyl-1-indenyl})_2\text{ZrCl}_2$, $\text{Me}_2\text{Si}(2\text{-methyl-4,5-benzoindenyl})_2\text{ZrCl}_2$, $\text{Me}_2\text{Si}(2,4,6\text{-trimethyl-1-indenyl})_2\text{ZrCl}_2$, $\text{Me}_2\text{Si}(2\text{-methyl-4,6-diisopropyl-1-indenyl})_2\text{ZrCl}_2$, $[\text{Me}_2\text{Si}(2\text{-methyl-\alpha-acenaphthindenyl})_2\text{ZrCl}_2$, or $\text{Me}_2\text{Si}(2\text{-methyl-4-phenyl-1-indenyl})_2\text{ZrCl}_2$, ethylene(2,4,6-trimethyl-1-indenyl) $_2\text{ZrCl}_2$, [ethylene(2-methyl-4,5-benzoindenyl) $_2\text{ZrCl}_2$, methylethylene(2-methyl-\alpha-acenaphthindenyl) $_2\text{ZrCl}_2$ or $\text{Ph}(\text{Me})\text{Si}(2\text{-methyl-\alpha-acenaphthindenyl})_2\text{ZrCl}_2$].

REMARKS

The applicants respectfully request reconsideration in view of the amendment and following remarks. Support for amended claims 1-3 can be found in the original claims 1-3 respectively. In claim 3 since the applicants have deleted extra species, the applicants had to delete the previously inserted "or" found towards the end of the claim and insert the word "or" before the last species remaining in the amended claim

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The applicants respectfully request reconsideration in view of the following remarks. Claims 1-3 were rejected on the basis of interference estoppel under 37 CFR §1 658(c). The applicants respectfully traverse this rejection. The applicants believe that the claimed subject matter is patentably distinct over the Count. The applicants have deleted the possibility of having a 4,5-benzoidenyl ligands from their claimed invention.

In the Office Communication dated November 1, 2000, the Examiner has cited *In re Kroekel, et al.*, 231 U.S.P.Q 640 (CAFC 1986) as authority to prevent Applicants from presenting the present claims in *ex parte* proceedings. In *Kroekel*, the Court denied applicants' argument that they had no obligation to broaden the lost claim during the interference proceeding, but could show via Rule 1.131 affidavits that they were the first inventors of the generic invention. The Applicants respectfully disagree with the Examiner's assertion that *In re Kroekel* is applicable. In *Kroekel*, the applicants were attempting to broaden claims. In the prior interference, only the "species" that was common to both applications was adjudicated. *Kroekel* did not attempt to include the genus in the interference. The amended claim he presented after the interference did "not exclude the precise subject matter lost in the interference." *Kroekel* at 644. The Court stated "[i]f [a] claim [is] patentably distinct from the lost count, it [can] not be denied to [Applicants] on the sole ground of interference estoppel." *Id.* at 643 (citation omitted). In the present application, the Applicants are narrowing the claims so as to exclude the precise subject matter lost in the interference and to be patentably distinct from the Count of the interference. The applicants are not trying to broaden their claims, but instead narrow their claims. For the above reasons, the applicants do not believe that *In re Kroekel* is related to the Applicants situation. The applicants again believe that *Ex parte Deckler* 21 USPQ 2d 1872 (Bd App. 1991) is the case that should be used as precedent (see in particular

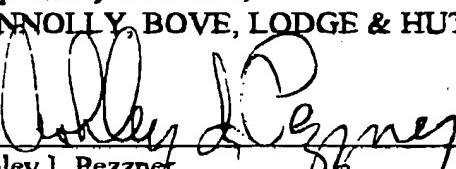
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page 6 of the amendment filed October 3, 2000). For the above reasons, the applicants respectfully request that this rejection be withdrawn.

A one month extension fee has been paid. If there are any additional fees due in connection with the filing of this response, including any fees required for an additional extension of time under 37 CFR 1.136, such an extension is requested and the Commissioner is authorized to charge any debit or credit any overpayment to Deposit Account No. 03-2775.

For the reasons set forth above, Applicants believe that the claims are patentable and a prompt and favorable action is solicited. The applicants believe that these claims are in condition for allowance, however, if the Examiner disagrees, the applicants respectfully request that the Examiner telephone the undersigned at (302) 888-6270.

Respectfully submitted,
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